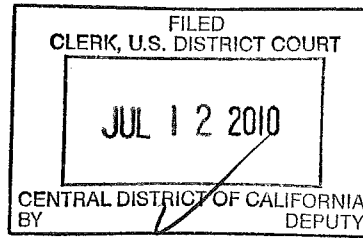


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9 Attorney for Plaintiff
 10 United States of America

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,)	CR No. 06-259(B) -DSF
)	
14 Plaintiff,)	<u>PLEA AGREEMENT</u>
)	
15 v.)	
)	
16 JOHN McTIERNAN,)	
)	
17 Defendant.)	
)	
18)	

19
 20 1. This constitutes the conditional and binding plea
 21 agreement between JOHN McTIERNAN ("defendant") and the United
 22 States Attorney's Office for the Central District of California
 23 ("the USAO") in the above-captioned case. This agreement is
 24 limited to the USAO and cannot bind any other federal, state or
 25 local prosecuting, administrative or regulatory authority.
 26
 27
 28

PLEA

2. Defendant agrees to plead guilty to counts one and two of the Second Superseding Indictment in United States v. John McTiernan, No. CR 06-259(B)-DSF ("counts one and two"), and count three of the First Superseding Indictment in United States v. John McTiernan, No. CR 06-259(A)-DSF ("count three").

Defendant's guilty pleas are conditional, in that defendant reserves the right, on appeal from the judgment, to seek review of the adverse rulings specified below (to the extent that such rulings are found to be appealable). If defendant prevails on appeal, defendant will be allowed to withdraw defendant's guilty pleas.

a. 2/17/09 Order denying Defendant's Motion to Recuse Hon. Dale S. Fischer (Docket #130);

b. 6/8/10 Order denying Defendant's Motion to Suppress Pursuant to 18 U.S.C. § 2515 (Docket #197);

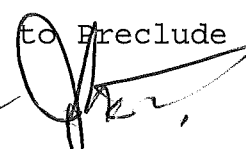
c. 6/8/10 Order denying Defendant's Motion to Dismiss Count 3 of the First Superseding Indictment (Docket #198);

d. 6/28/10 Order granting in part Government's Motion in Limine to Limit Scope of Cross-Examination of Witness (Docket #225);

e. 6/28/10 Order denying Defendant's Motion to Compel Further Discovery (Docket #229);

f. 6/28/10 Order granting in part Government's Motion in Limine to Preclude Irrelevant Evidence and Argument Aimed at Jury Nullification (Docket #238);

g. 7/2/10 Order denying Defendant's Motion to Recuse Hon. Dale S. Fischer (Docket #251);

1 h. 7/7/10 Order granting in part and denying in part
2 Defendant's Motions to Preclude Certain Evidence and Argument
3 (Docket #254). ²⁵⁴ ^{DAS} 
4

NATURE OF THE OFFENSE

5 3. In order for defendant to be guilty of counts one and
6 two, which charge violations of Title 18, United States Code,
7 Section 1001(a)(2), the following must be true: (1) defendant
8 made a false statement in a matter within the jurisdiction of the
9 Department of Justice, Federal Bureau of Investigation; (2)
10 defendant acted willfully, that is deliberately and with
11 knowledge that the statement was untrue; and (3) the statement
12 was material; that is, the statement had a natural tendency to
13 influence, or was capable of influencing, the Federal Bureau of
14 Investigation's decisions or activities. Defendant admits that
15 defendant is, in fact, guilty of these offenses as described in
16 counts one and two of the Second Superseding Indictment.

17 4. In order for defendant to be guilty of count three,
18 which charges a violation of Title 18, United States Code,
19 Section 1623(a), (c), the following must be true: (1) defendant
20 made a declaration under oath before a United States court; (2)
21 the declaration was false; (3) defendant knew that the
22 declaration was false; and (4) the false declaration was material
23 to the matters before the court; that is, the declaration had a
24 natural tendency to influence, or was capable of influencing, the
25 court. Defendant admits that defendant is, in fact, guilty of
26 this offense as describe in count three of the First Superseding
27 Indictment.
28

PENALTIES

5. The statutory maximum sentence that the Court can impose for each violation of Title 18, United States Code, Section 1001 is: five years imprisonment; a three-year period of supervised release; a fine of \$250,000 or twice the gross gain or gross loss resulting from the offense, whichever is greatest; and a mandatory special assessment of \$100.

6. The statutory maximum sentence that the Court can impose for a violation of Title 18, United States Code, Section 1623(a), (c) is: five years imprisonment; a three-year period of supervised release; a fine of \$250,000 or twice the gross gain or gross loss resulting from the offense, whichever is greatest; and a mandatory special assessment of \$100.

7. Therefore, the total maximum sentence for all offenses to which defendant is pleading guilty is: 15 years imprisonment; a three-year period of supervised release; a fine of \$750,000 or twice the gross gain or loss resulting from the offense, whichever is greatest; and a mandatory special assessment of \$300.

8. Defendant understands that, by pleading guilty, defendant may be giving up valuable government benefits and valuable civic rights, such as the right to vote, the right to possess a firearm, the right to hold office, and the right to serve on a jury. Defendant understands that once the court accepts defendant's guilty pleas, it will be a federal felony for defendant to possess a firearm or ammunition. Defendant understands that the convictions in this case may also subject defendant to various other collateral consequences, including but

1 not limited to revocation of probation, parole, or supervised
2 release in another case and suspension or revocation of a
3 professional license. Defendant understands that unanticipated
4 collateral consequences will not serve as grounds to withdraw
5 defendant's guilty pleas.

6 9. Defendant understands that, if defendant is not a
7 United States citizen, the felony convictions in this case may
8 subject defendant to removal, also known as deportation, which
9 may, under some circumstances, be mandatory. The court cannot,
10 and defendant's attorney also may not be able to, advise
11 defendant fully regarding the immigration consequences of the
12 felony convictions in this case. Defendant understands that by
13 entering guilty pleas defendant waives any claim that unexpected
14 immigration consequences may render defendant's guilty pleas
15 invalid.

16 FACTUAL BASIS

17 10. Defendant and the USAO agree and stipulate to the
18 statement of facts provided below. This statement of facts
19 includes facts sufficient to support pleas of guilty to the
20 charges described in this agreement and to establish the
21 Sentencing Guideline factors set forth in paragraph 13 below. It
22 is not meant to be a complete recitation of all facts relevant to
23 the underlying criminal conduct or all facts known to defendant
24 that relate to that conduct.

25 Counts One and Two

26 On February 13, 2006, defendant was telephonically
27 interviewed by a Special Agent of the Federal Bureau of
28 Investigation ("FBI") in connection with an

1 investigation into, among other things, former private
2 investigator Anthony Pellicano's use of illegal
3 wiretapping. Defendant stated during the telephonic
4 interview that the only time he had hired or had
5 contact with Anthony Pellicano was in connection with
6 defendant's divorce proceedings. Defendant also stated
7 during the telephonic interview that he had never
8 discussed wiretapping with Pellicano. As defendant
9 well knew at the time he made these statements, these
10 statements were false. In fact, defendant had retained
11 Pellicano in or around August 2000 and had paid him at
12 least \$50,000 to conduct an illegal wiretap of Charles
13 Roven, and Pellicano had discussed with defendant his
14 interception of Roven's telephone calls and the
15 information that Pellicano had obtained from that
16 wiretap. Defendant's false statements were material to
17 the FBI's investigation.

18 Count Three

19 On or about April 17, 2006, after having been
20 placed under oath at his guilty plea hearing in United
21 States District Court, defendant, when asked by the
22 court whether his attorney had told him how he should
23 answer any of the questions asked by the court at that
24 hearing, stated, "No, he did not, ma'am."

25 On or about September 17, 2007, defendant signed a
26 declaration under penalty of perjury and caused it to
27 be submitted to the United States District Court in
28 support of his motion to withdraw his previously

1 entered guilty plea. In paragraph 12 of that
2 declaration, defendant stated that his attorney John
3 Carlton had specifically instructed defendant, prior to
4 the April 17, 2006 guilty plea hearing, to "give no
5 hint that [FBI] Agent Ornellas' interview of
6 [defendant] had not been conducted in person and in
7 fact he called on the telephone from Los Angeles," and
8 had "proposed some very careful wording" and
9 "rehearsed" defendant's responses so that he could "get
10 away with it."

11 The above two statements were both made knowingly
12 and are inconsistent to the degree that one of them is
13 necessarily false. Both statements were material to
14 the matters before the court.

15 WAIVER OF CONSTITUTIONAL RIGHTS

16 11. By pleading guilty, defendant gives up the following
17 rights:

- 18 a) The right to persist in a plea of not guilty.
19 b) The right to a speedy and public trial by jury.
20 c) The right to the assistance of legal counsel at
21 trial, including the right to have the Court appoint counsel for
22 defendant for the purpose of representation at trial. (In this
23 regard, defendant understands that, despite his plea of guilty,
24 he retains the right to be represented by counsel - and, if
25 necessary, to have the court appoint counsel if defendant cannot
26 afford counsel - at every other stage of the proceedings.)
27
28

1 d) The right to be presumed innocent and to have the
 2 burden of proof placed on the government to prove defendant
 3 guilty beyond a reasonable doubt.

4 e) The right to confront and cross-examine witnesses
 5 against defendant.

6 f) The right, if defendant wished, to testify on
 7 defendant's own behalf and present evidence in opposition to the
 8 charges, including the right to call witnesses and to subpoena
 9 those witnesses to testify.

10 g) The right not to be compelled to testify, and, if
 11 defendant chose not to testify or present evidence, to have that
 12 choice not be used against defendant.

13 By pleading guilty, defendant also gives up any and all
 14 rights to pursue any affirmative defenses, Fourth Amendment or
 15 Fifth Amendment claims, and other pretrial motions that have been
 16 filed or could be filed, except as set forth in paragraph 2 of
 17 this agreement.

18 SENTENCING FACTORS

19 12. Defendant understands that the Court is required to
 20 consider and apply the United States Sentencing Guidelines
 21 ("U.S.S.G." or "Sentencing Guidelines") but may depart from those
 22 guidelines under some circumstances.

23 13. Defendant and the USAO agree and stipulate to the
 24 following applicable sentencing guideline factors:

25 Counts One and Two

26 Base Offense Level : 6 [U.S.S.G. § 2B1.1(a)]

27 _____
 28 Total Offense Level : 6

1 Count Three

2 Base Offense Level : 14 [U.S.S.G. § 2J1.3(a)]

3 Substantial Interference
4 With Administration of
Justice : +3

[U.S.S.G. § 2J1.3(b)(2)]

5
6 Total Offense Level : 177 Total Offense Level

8 Combined Offense Level: 17 [U.S.S.G. § 3D1.4]

9 Acceptance of
10 Responsibility : -2 [U.S.S.G. § 3E1.1(a)]

11 Total Offense Level : 15

12 Criminal History
Category : I13
14 Guideline Range : 18 - 24 months imprisonment

15 \$4,000 - \$40,000 fine

16 The parties agree not to seek, argue, or suggest that any other
17 specific offense characteristics, adjustments, or departures be
18 imposed.19 14. Defendant and the USAO agree that an appropriate
20 disposition of this case is that the court impose a sentence
21 within the range of: 0-12 months imprisonment; 3 years
22 supervised release (with conditions to be fixed by the Court); a
23 \$100,000 fine; and a \$300 special assessment.24 15. The Court will determine the facts and calculations
25 relevant to sentencing and decide whether to agree to be bound by
26 this agreement. Both defendant and the USAO are free to: (a)
27 supplement the facts by supplying relevant information to the
28 United States Probation Office and the Court, and (b) correct any

1 and all factual misstatements relating to the calculation of the
2 sentence.

3 16. Defendant understands and agrees that this agreement is
4 entered into pursuant to Federal Rule of Criminal Procedure
5 11(c)(1)(C). So long as defendant does not breach the agreement,
6 defendant may withdraw from this agreement and render it null and
7 void if the Court refuses to be bound by this agreement. The
8 USAO may, in its discretion, withdraw from this agreement and
9 render it null and void if the defendant breaches this agreement
10 or the Court refuses to be bound by this agreement.

11 DEFENDANT'S OBLIGATIONS

12 17. Defendant agrees that he will:

13 a) Plead guilty as set forth in this agreement.

14 b) Not knowingly and willfully fail to abide by all
15 sentencing stipulations contained in this agreement.

16 c) Not knowingly and willfully fail to: (i) appear as
17 ordered for all court appearances, (ii) surrender as ordered for
18 service of sentence, (iii) obey all conditions of any bond, and
19 (iv) obey any other ongoing court order in this matter.

20 d) Not commit any crime; however, offenses which would
21 be excluded for sentencing purposes under U.S.S.G. § 4A1.2(c) are
22 not within the scope of this agreement.

23 e) Not knowingly and willfully fail to be truthful at
24 all times with Pretrial Services, the U.S. Probation Office, and
25 the Court.

26 f) Pay the applicable special assessment at or before
27 the time of sentencing unless defendant lacks the ability to pay.

1 THE USAO'S OBLIGATIONS

2 18. If defendant complies fully with all of defendant's
3 obligations under this agreement, the USAO agrees:

4 a) To abide by all sentencing stipulations contained in
5 this agreement.

6 b) Except for criminal tax violations (including
7 conspiracy to commit such violations chargeable under 18 U.S.C.
8 § 371), not to further prosecute defendant for violations of
9 Title 18, United States Code, arising out of defendant's conduct
10 described in the stipulated factual basis set forth in paragraph
11 10 above. Defendant understands that the USAO is free to
12 prosecute defendant for any other unlawful past conduct or any
13 unlawful conduct that occurs after the date of this agreement.
14 Defendant agrees that at the time of sentencing the Court may
15 consider the uncharged conduct in determining the applicable
16 Sentencing Guidelines range, where the sentence should fall
17 within that range, the propriety and extent of any departure from
18 that range, and the determination of the sentence to be imposed
19 after consideration of the Sentencing Guidelines and all other
20 relevant factors.

21 c) Not to oppose defendant's request for bail pending
22 appeal.

23 BREACH OF AGREEMENT

24 19. If defendant, at any time between the execution of this
25 agreement and defendant's sentencing on a non-custodial sentence
26 or surrender for service on a custodial sentence, knowingly
27 violates or fails to perform any of defendant's obligations under
28 this agreement ("a breach"), the USAO may declare this agreement

1 breached. If the USAO declares this agreement breached, and the
2 Court finds such a breach to have occurred, defendant will not be
3 able to withdraw defendant's guilty pleas, and the USAO will be
4 relieved of all of its obligations under the agreement.

5 20. Following a knowing and willful breach of this
6 agreement by defendant, should the USAO elect to pursue any
7 charge that was either dismissed or not filed as a result of this
8 agreement, then:

9 a) Defendant agrees that the applicable statute of
10 limitations is tolled between the date of defendant's signing of
11 this agreement and the commencement of any such prosecution or
12 action.

13 b) Defendant gives up all defenses based on the statute
14 of limitations, any claim of preindictment delay, or any speedy
15 trial claim with respect to any such prosecution, except to the
16 extent that such defenses existed as of the date of defendant's
17 signing of this agreement.

18 c) Defendant agrees that: (i) any statements made by
19 defendant, under oath, at the guilty plea hearing; ii) the
20 stipulated factual basis statement in this agreement; and iii)
21 any evidence derived from such statements, are admissible against
22 defendant in any future prosecution of defendant, and defendant
23 shall assert no claim under the United States Constitution, any
24 statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of
25 the Federal Rules of Criminal Procedure, or any other federal
26 rule, that the statements or any evidence derived from any
27 statements should be suppressed or are inadmissible.
28

1 LIMITED MUTUAL WAIVER OF APPEAL AND COLLATERAL ATTACK

2 21. Defendant gives up the right to appeal any sentence
3 imposed by the Court, and the manner in which the sentence is
4 determined, provided that the sentence is within the range agreed
5 to in paragraph 14 above. Defendant also gives up any right to
6 bring a post-conviction collateral attack on the convictions or
7 sentence, except a post-conviction collateral attack based on a
8 claim of ineffective assistance of counsel, a claim of newly
9 discovered evidence, or a explicitly retroactive change in the
10 applicable Sentencing Guidelines, sentencing statutes, or
11 statutes of conviction. Notwithstanding the foregoing, defendant
12 retains the ability to appeal the conditions of supervised
13 release imposed by the court, with the exception of the
14 following: standard conditions set forth in district court
15 General Orders 318 and 01-05; the drug testing conditions
16 mandated by 18 U.S.C. §§ 3563(a)(5) and 3583(d); and the alcohol
17 and drug use conditions authorized by 18 U.S.C. § 3563(b)(7).

18 22. The USAO gives up its right to appeal any sentence
19 imposed by the Court provided that the sentence is within the
20 range agreed to in paragraph 14 above.

21 RESULT OF VACATUR, REVERSAL OR SET-ASIDE

22 23. Defendant and the USAO agree that if any count of
23 conviction is vacated, reversed, or set aside as a result of
24 review on appeal of the adverse determinations specified in
25 paragraph 2 above, the government will not oppose defendant's
26 withdrawal of his guilty plea(s) as to any remaining count(s) of
27 conviction. Defendant and the USAO agree that such a plea
28

1 withdrawal, under those specific circumstances, shall not be
2 considered a breach of this agreement.

3 24. Following the withdrawal of any guilty plea(s) pursuant
4 to paragraph 23, should the USAO elect to pursue any count as to
5 which such plea withdrawal has occurred, or any charge that was
6 either dismissed or not filed as a result of this agreement
7 (including additional counts charging violations of Title 18,
8 United States Code, Section 1623 in connection with defendant's
9 2007 motion to withdraw his guilty plea), then:

10 a) Defendant agrees that the applicable statute of
11 limitations is tolled between the date of defendant's signing of
12 this agreement and the commencement of any such prosecution or
13 action.

14 b) Defendant gives up all defenses based on the statute
15 of limitations, any claim of preindictment delay, or any speedy
16 trial claim with respect to any such prosecution, except to the
17 extent that such defenses existed as of the date of defendant's
18 signing of this agreement.

19 COURT NOT A PARTY

20 25. The Court is not a party to this agreement and need not
21 accept any of the USAO's sentencing recommendations or the
22 parties' stipulations.

23 NO ADDITIONAL AGREEMENTS

24 26. Except as set forth herein, there are no promises,
25 understandings or agreements between the USAO and defendant or
26 defendant's counsel. Nor may any additional agreement,
27 understanding or condition be entered into unless in a writing
28 signed by all parties or on the record in court.

PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

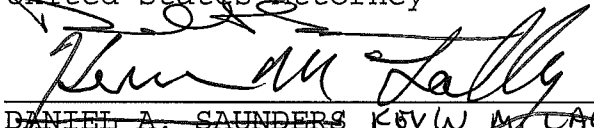
27. The parties agree and stipulate that this Agreement will be considered part of the record of defendant's guilty plea hearing as if the entire Agreement had been read into the record of the proceeding.

This agreement is effective upon signature by defendant and an Assistant United States Attorney.

AGREED AND ACCEPTED

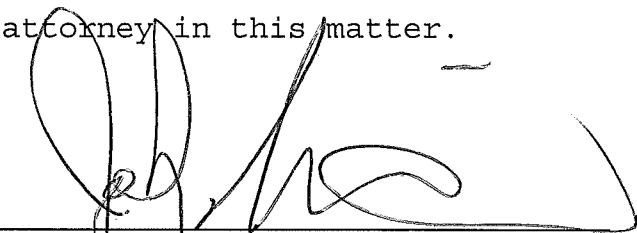
UNITED STATES ATTORNEY'S OFFICE
FOR THE CENTRAL DISTRICT OF CALIFORNIA

ANDRÉ BIROTTE JR.
United States Attorney


~~DANIEL A. SAUNDERS~~ KEVIN M. CALLY
Assistant United States Attorney

7/12/10
Date

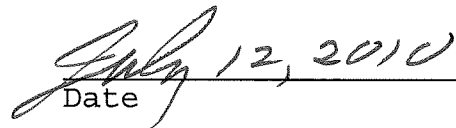
I have read this agreement and carefully discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. My attorney has advised me of my rights, of possible defenses, of the Sentencing Guideline provisions, and of the consequences of entering into this agreement. No promises or inducements have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.


JOHN McTIERNAN
Defendant

7/12/10
Date

1 I am JOHN McTIERNAN's attorney. I have carefully discussed
2 every part of this agreement with my client. Further, I have
3 fully advised my client of his rights, of possible defenses, of
4 the Sentencing Guidelines' provisions, and of the consequences of
5 entering into this agreement. To my knowledge, my client's
6 decision to enter into this agreement is an informed and
7 voluntary one.

8
9 


Date

10 Counsel for Defendant
11 JOHN McTIERNAN
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